



Office of the City Manager

CONSENT CALENDAR
January 19, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services
 Subject: Authorization to Execute a Revised Programmatic Agreement with the California State Historic Preservation Officer

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a revised Programmatic Agreement (PA) with the California State Historic Preservation Officer (SHPO) to clarify which rehabilitation activities would not require SHPO's review.

FISCAL IMPACTS OF RECOMMENDATION

The proposed changes will streamline the environmental review process by reducing staff time for certain projects, thereby allowing accessibility improvements for disabled residents to be completed more quickly.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley administers federal funding from the Department of Housing and Urban Development (HUD) to carry out various types of projects, including major and minor rehabilitation. Federal regulations (24 CFR Part 58) require that recipients of HUD funds conduct an environmental review before undertaking any of these rehabilitation projects. One component of this review is to comply with federal and state laws governing historic preservation. To streamline the review process for historic preservation, the City entered into a Programmatic Agreement (PA) on February 3, 1993 with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP). The PA allows the City, the SHPO (a state agency), and the ACHP (a federal agency) to mutually agree that certain types of projects will not be reviewed by either agency because the projects are too minor to warrant such a review. ACHP recommends executing a PA for programs that have similar or repetitive effects on properties to avoid the need for a separate historic preservation review for each project.

Under the current PA, the City sends approximately 15 projects to SHPO annually for their concurrence with staff's documented determination of "no effects on historic properties." About half of these projects consist of exterior alterations to improve accessibility for disabled residents of the properties, such as the installation of lifts and construction of wheelchair ramps. SHPO has not objected to any of these

determinations and these types of projects do not rise to the level of ACHP review. Staff is proposing to modify the existing PA in order to include additional types of accessibility improvements and landscaping changes to be excluded from state review. The proposed revisions are modeled after San Francisco's PA and will allow the City to move these types of accessibility projects to completion more quickly than can be accomplished currently. These are important improvements that allow low-income seniors and people with disabilities to remain in their homes and communities rather than be placed in facilities or be forced to move. From an equity lens it is worth noting that homeowners who can afford to pay for rehabilitation projects that allow them to continue to reside in their own homes are not subject to this process.

The Landmark Preservation Commission (LPC) and the City's Historic Preservation Planner have reviewed the proposed changes and took no formal action regarding the proposal. They also indicated that, while they would not want to delay the process, they would be interested in being informed about properties being approved under SHP. Staff are exploring how best to implement this request. In order to expedite these important projects for a very vulnerable population and to align with state and federal recommendations, as well as other local jurisdictions, we recommend that Council approve the item as presented. SHPO has reviewed the revised PA several times and notably requested the removal of ACHP as a signatory since none of the projects covered by the PA would require ACHP review. ACHP requested that the City include stipulations that address emergencies and public outreach.

BACKGROUND

Under 24 CFR Part 58, the City of Berkeley is the Responsible Entity and assumes the responsibility of HUD for environmental review, decision-making, and action. A component of the environmental review is historic preservation. Section 106 of the National Historic Preservation Act (NHPA) requires that a federal agency take into account the effect of their undertaking on historic properties. The PA streamlines that process by laying out the agreed upon terms and conditions to resolve potential adverse effects of undertakings and programs affected by the use of funding from HUD.

The City has several programs that use the following HUD funding sources: Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), and HOME Investment Partnerships (HOME) program. The City's Housing Trust Fund (HTF), which provides loans and grants to create, maintain, or expand the City's affordable housing stock, contains CDBG and HOME funds. The City also provides HUD funds to several programs where community agencies conduct home repairs for low income households and construction of access ramps and lifts for disabled households.

In 2012, staff submitted a revised PA for the LPC and general public to review and comment and in 2015, Council adopted Resolution No. 67,260–N.S. to authorize the City Manager's execution of a revised PA. However, due to changing priorities and conflicting schedules, the revised PA was not executed. When staff attempted to

execute the PA in 2018, ACHP recommended staff reach out to consulting parties and the public again. In December 2018, a modified draft of the PA was reviewed by LPC and the general public. Since the current version of the revised PA differed from the version submitted to Council in 2015, a new authorization is requested.

In addition to the proposed revisions already mentioned in the report, the new PA also contains the following notable changes:

- Clarifies the use of any revenue from HUD is subject to Section 106 and not just programs previously listed in the PA;
- Includes stipulations that address emergencies and public outreach as requested by the ACHP;
- Changes the usage of several terms for consistency (e.g. “COB” changed to “City”);
- Includes a “definitions” section; and
- Eliminates poor drafting errors, such as an erroneous reference to federal law.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The PA delegates certain decision making responsibilities to the City of Berkeley by allowing all parties to mutually agree that certain activities will not require review by SHPO. The proposed revisions to the PA will reduce the amount of time it takes for the City to complete its environmental review and this will allow the rehabilitation projects to occur sooner, thereby assisting disabled Berkeley residents quicker.

ALTERNATIVE ACTIONS CONSIDERED

If the Council does not authorize the execution of the revised PA, staff would continue using the existing PA which requires requesting concurrence with SHPO on projects containing exterior modifications associated with improving accessibility for disabled City of Berkeley residents. This adds the cost of staffing time and delays implementation of projects that SHPO and ACHP think are unnecessary.

CONTACT PERSON

Be Tran, Associate Planner, HHCS, (510) 981-5422

Attachments:

1: Resolution

- Exhibit A-1: Proposed Programmatic Agreement (with strike-out, Word doc)
- Exhibit A-2: Proposed Programmatic Agreement (with strike-out, PDF)
- Exhibit A-3: Proposed Programmatic Agreement (clean)

RESOLUTION NO. ##,###-N.S.

REVISED PROGRAMMATIC AGREEMENT WITH THE CALIFORNIA STATE
HISTORIC PRESERVATION OFFICER

WHEREAS, the City is a recipient of the Community Development Block Grant Program, the HOME Investment Partnerships Program, and the Emergency Shelter Grant Program administered by the Department of Housing and Urban Development (HUD); and

WHEREAS, the City is the Responsible Entity and assumes the responsibility of HUD to comply with the environmental review procedures under the National Environmental Policy Act and Section 106 review requirements under the National Historic Preservation Act; and

WHEREAS, the City executed a Programmatic Agreement with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) on February 3, 1993 to allow for expedited review of HUD funded projects affecting historic properties; and

WHEREAS, the City proposes to revise the Programmatic Agreement to include undertakings that would not require SHPO or ACHP review such as modifications associated with accessibility for disabled people; and

WHEREAS, the City Council previously approved Resolution No. 67,260–N.S. authorizing the City Manager to execute the revised PA in 2015 but the PA was not executed; and

WHEREAS, a new resolution is sought because the current version of the PA differs from the version previously submitted to Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute the new revised Programmatic Agreement (Exhibit A) with SHPO, including any additional changes proposed by SHPO and ACHP.

Exhibits

A: Proposed Programmatic Agreement (with track changes (Word doc and PDF) and clean copy)

PROGRAMMATIC AGREEMENT
BY AND AMONG
THE CITY OF BERKELEY;
~~THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,~~
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

REGARDING HISTORIC PROPERTIES AFFECTED BY USE
OF ~~REVENUE FROM THE DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT PART 58 PROGRAMS COMMUNITY DEVELOPMENT BLOCK
GRANTS; RENTAL REHABILITATION BLOCK GRANTS; AND MCKINNEY ACT
HOMELESS PROGRAMS INCLUDING
THE EMERGENCY SHELTER GRANTS PROGRAM, TRANSITIONAL HOUSING,
PERMANENT HOUSING FOR THE HOMELESS HANDICAPPED,
AND SUPPLEMENTAL ASSISTANCE FOR FACILITIES TO ASSIST THE HOMELESS;
THE HOPE II PROGRAM; THE HOME PROGRAM; THE HOPWA PROGRAM
AND THE SHELTER PLUS CARE PROGRAM~~

WHEREAS, the City of Berkeley (~~COB~~ "City"), a "Responsible Entity" under 24 CFR Part 58, proposes to administer and fund projects and programs (~~hereinafter referred to as "Undertakings," as defined in 36 CFR 800.16y~~) in the City of Berkeley, California with monies from the U.S. Department of Housing and Urban Development ("HUD") programs ("Programs") delegated to the City pursuant to 24 CFR Part 58 or any other pertinent HUD regulations; and ~~Community Development Block Grant program (CDBG) of the Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974; the McKinney Homeless Programs including the Emergency Shelter Grants Program, Transitional Housing, Permanent Housing for the Homeless Handicapped, and Supplemental Assistance for Facilities to Assist the Homeless; the Hope II program; the HOME program; and the Shelter Plus Care program; and~~

WHEREAS, ~~COB~~ ~~the City~~ has determined the administration of these ~~projects~~ ~~Undertakings~~ and ~~p~~Programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places ("~~h~~Historic ~~p~~Properties") and has consulted with the California State Historic Preservation Officer ("SHPO") ~~and the Advisory Council on Historic Preservation (Council) ("ACHP")~~ pursuant to 36 CFR Part 800.13 of the regulations implementing Section 106 of the National Historic Preservation Act (16 USC 470f) ("~~Act~~"); and

WHEREAS, pursuant to the ~~Advisory Council on Historic Preservation's ("ACHP")~~ Section 106 regulations, "Protection of Historic Properties" ("~~Regulations~~") [36 CFR ~~Part~~ 800], the City has requested the comments of the ACHP; and

WHEREAS, pursuant to ACHP's Section 106 regulations, the City has conducted outreach and has actively sought and requested the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may

be affected by Undertakings funded under the terms of this Agreement; and these Tribes did not respond to our requests to engage in such consultation; and

WHEREAS, the City will continue to conduct outreach and will actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and

WHEREAS, pursuant to ACHP's Section 106 Regulations, the City has considered the nature of the program and its likely effects on historic properties and has taken steps to involve individuals, organizations and entities likely to be effected by the Undertaking; and

WHEREAS, pursuant to ACHP's Section 106 Regulations, the City has arranged for public participation appropriate to the subject matter and scope of the Programmatic Agreement by providing notice to the public and has held meetings before the Landmarks Preservation Commission concerning the Undertaking for the purpose of informing the public and including them in the consultation process; and

WHEREAS, sub-recipients receiving Part 58 funds, which are the subject matter of this agreement, by, from, or through the City agree as a condition of receiving funding to comply fully with the requirements of the National Historic Preservation Act of 1966 (16 USC 470) and the procedures set forth in 36 CFR Part 800 on the Historic Preservation Procedures for Protection of Historic Properties; and

NOW, THEREFORE, ~~COB~~the City, ~~and~~ the SHPO, ~~and the Council~~ ACHP agree that the ~~programs~~ Undertakings shall be administered in accordance with the following stipulations to satisfy ~~SHRA's~~ the City's Section 106 responsibilities under Section 106 for all individual ~~u~~Undertakings of the ~~p~~Programs, ~~involving rehabilitation.~~

STIPULATIONS

The City of Berkeley shall ensure the following measures are carried out:

I. TERMINATION OF EXISTING PROGRAMMATIC AGREEMENT

The Programmatic Agreement ("PA") entered into on December 3, 1992 by the Advisory Council on Historic Preservation, the California State Historic Preservation Officer and the City of Berkeley is hereby terminated by mutual agreement and is no longer in effect as of the effective date of this Programmatic Agreement. The stipulations agreed to in the PA are replaced in their entirety by the stipulations agreed to in this PA.

II. APPLICABILITY OF THE PROGRAMMATIC AGREEMENT

~~COB~~The City shall comply with the stipulations set forth in this Agreement ~~PA~~ for all ~~u~~Undertakings within the City of Berkeley, California, which involve the exterior or interior rehabilitation of residential and commercial structures and is assisted entirely or

in part by monies from the ~~p~~Programs of the U.S. Department of Housing and Urban Development ~~listed above~~ subject to 24 CFR Part 58. This agreement is also applicable to ~~u~~Undertakings which involve solely acquisition and rehabilitation of structures provided that such ~~u~~Undertakings do not involve demolition or new construction. The review process established by this Agreement PA shall be completed prior to ~~COB's the City's~~ final approval of any application for assistance under these ~~p~~Programs, and prior to ~~COB the City~~ or the property owner altering the property, or initiating construction or making irrevocable commitment for construction that may affect a property that is fifty (50) years of age or older. Any ~~U~~undertaking that does not qualify for review under the terms of this Agreement PA shall be reviewed in accordance with the procedures outlined in 36 CFR Part 800.

III. COORDINATION WITH OTHER FEDERAL AGENCIES—36 CFR § 800.2(C)(4)
Other Federal agencies providing permits, licenses, or financial assistance for Program activities covered under the terms of this PA may, with the concurrence of the City and SHPO, satisfy their Section 106 responsibilities by accepting and complying with the terms of this PA. In such situations, the City and the Federal Agency shall notify the SHPO in writing of their intent to use this PA to achieve compliance with Section 106 requirements. If the SHPO does not respond within 21 days of receipt of such a notice of intent, the City and other Federal agency will assume SHPO's concurrence, as referenced above. Copies of all such notification letters shall be maintained in the files established by the City for each such Undertaking.

IV. UNDERTAKING NOT REQUIRING REVIEW BY SHPO ~~OR THE COUNCIL~~
The following Undertakings do not require review by SHPO and no signatory is required by this PA to determine the National Register of Historic Places ("NRHP") eligibility of properties affected by these Undertakings.

- A. Undertakings not requiring review by the SHPO ~~or the Council~~ are enumerated in Attachment "A." An Undertaking consisting of activities ~~enumerated in Attachment "A" as well as activities~~ not listed in Attachment "A" shall be reviewed pursuant to the terms of this Agreement PA. ~~An undertaking, unless exempt from review under the provisions of Stipulation II.B. below, which is exempted from review under Attachment "A" nevertheless will be designed to be in conformity~~ Undertakings involving Historic Properties but nevertheless exempt from review pursuant to Attachment "A" shall be designed to conform with the California State Historic Building Code [State of California, Title 24 Building Standards, Part 8 ("SHBC")]; as well as the *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Building* ("Standards").
- B. Undertakings affecting only properties that are less than fifty (50) years of age do not require review pursuant to the terms of this Agreement PA.

- C. Undertakings which are limited to the rehabilitation of interior spaces with in single family residential structures where such work will not be visible ~~form~~ from the exterior of the structure do not require review pursuant to the terms of this AgreementPA.

III.V. AREA OF POTENTIAL EFFECTS

It is agreed for the purposes of this AgreementPA, with the exception of Stipulation VII.B., that the Area of Potential Effects (“APE”) will be limited to the individual building when a proposed project is limited to the rehabilitation of its existing interior or exterior features.

IV.I. IDENTIFICATION OF HISTORIC PROPERTIES

- A. ~~COB~~ The City shall review all existing information on any property within the APE that may be affected by the use of these funds, including the National Register of Historic Places and lists of ~~h~~ Historic ~~p~~ Properties maintained by the City of Berkeley.
 - 1. If the property proposed for rehabilitation is listed in the National Register or has already been determined eligible for inclusion in the National Register, ~~COB~~ the City shall proceed with the review of the project pursuant to Stipulation VII., unless exempted under Stipulation III.V.
 - 2. If the property has been determined by ~~COB~~ the City, in written consultation with the SHPO, within the last five (5) years prior to the current ~~u~~ Undertaking to be ineligible for inclusion in the National Register, then the ~~u~~ Undertaking may proceed without further review under the terms of this AgreementPA.
- B. If the property proposed for rehabilitation is not listed in the National Register, has not been evaluated for the National Register eligibility within the last five (5) years, and is at least 50 years of age, then ~~COB~~ the City shall submit the documentation required pursuant to 36 CFR 800.4 plus a completed California Historic Resources Inventory form (DPR523) to the SHPO for review, ~~included in Attachment “B” to this Agreement~~. Other information may be requested by the SHPO if necessary. ~~COB~~ The City shall apply the National Register ~~e~~ Criteria and notify the SHPO of its determination in the submittal.
 - 1. If the SHPO agrees with ~~COB~~ the City that a property is eligible under the criteria, the property shall be considered eligible for the National Register for purposes of this AgreementPA, and shall hereinafter be referred to as a ~~h~~ Historic ~~p~~ Property. The ~~COB~~ City

shall continue consultation in accordance with the terms of this [Agreement PA](#) for all such properties.

2. If the SHPO agrees with the [COB-City](#) that the criteria are not met, the property shall be considered ineligible for the inclusion in the National Register for a period of five (5) years from the date of the SHPO's review. Such properties need not be reevaluated during this five (5) year period, unless a party to this [Agreement PA](#) notifies the [COB-City](#) in writing of changing perceptions of significance warrants a property reevaluation. Such properties require no further review under this [Agreement PA](#).
3. If the SHPO disagrees with the [COB's-City's](#) determination regarding eligibility, [COB-the City](#) shall consult further with the SHPO to reach agreement. If agreement cannot be reached, [COB the City](#) shall obtain a final determination from the Secretary of the Interior pursuant to the applicable National Park Services regulations, 36 CFR Part 63.

VII. ASSESSMENTS OF EFFECTS

- A. Prior to undertaking any activities that are not exempt under Stipulation [IIIV](#), [COB-the City](#) shall provide the SHPO with clear, unobstructed photographs of the historic property and a general work description which adequately details the scope of work for each rehabilitation project that may affect a [hHistoric pProperty](#), including work write-ups, working drawings and specifications, as appropriate, and any additional documentation necessary to understand the [uUndertaking](#). The [COB-City](#) shall ensure that the SHBC will be employed [to the greatest extent feasible](#) in all rehabilitation projects. The [COB-City](#) shall apply Criteria of Effect and Adverse Effect (36 CFR 800.9) to any [hHistoric pProperty](#) that may be affected by an [uUndertaking](#), and will review the scope of work to determine if the [uUndertaking](#) conforms to the SHBC as well as the recommended [approached approaches](#) contained in the [The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings \(Standards\)Standards](#).
 1. If the [COB-City](#) determines that an [uUndertaking](#) will have no effect, the [COB-City](#) shall notify the SHPO in writing of this finding. If SHPO does not object to this written notice within fifteen (15) days, the Undertaking may proceed without further review.
 2. If the [COB-City](#) determines that an [uUndertaking](#) conforms to the Standards and complies with SHBC, [COB-the City](#) shall notify the SHPO in writing of this finding. If the SHPO does not object in writing to this determination within thirty (30) days after receipt, the

Undertaking shall be considered to not adversely ~~effect~~ affect ~~h~~HHistoric ~~p~~Properties and may proceed as submitted without further review.

3. If the ~~COB-City~~ or the SHPO find that an ~~u~~Undertaking does not conform to the Standards or comply with SHBC, the Undertaking will be considered to adversely affect ~~h~~HHistoric ~~p~~Properties. The SHPO may recommend modifications to the scope of work or conditions under which the Undertaking would be found to conform to the Standards and the SHBC in its response to ~~SHRA~~the City. ~~SHRA~~The City shall consult further with the SHPO to seek ways to avoid, minimize, or mitigate the adverse effect. If all adverse effects cannot be avoided, the ~~COB-City~~ shall initiate consultation with the SHPO ~~and Council~~ in accordance with 36CFR 800.~~56~~.
4. The ~~COB-City~~ will notify the SHPO of any changes to the scope of work and shall provide the SHPO with the opportunity to review and approve such changes. If the changes do not conform to the Standards or comply with the SHBC, the parties shall consult further and the ~~COB-City~~ will initiate consultation with the SHPO ~~and Council~~ in accordance with 36 CFR 800.~~5(e)6~~ if an adverse effect cannot be avoided.
5. The ~~COB-City~~ shall provide completion photographs on each rehabilitation project to the SHPO and shall retain documentation of the rehabilitation, including the work write-ups and photographs as part of its permanent records.

- B. Additionally, the ~~COB-City~~ shall consult in writing with the SHPO to determine if an ~~u~~Undertaking which includes ground disturbing activities has the potential to affect an aArcheological ~~properties~~Resource (as defined by the Archaeological Resources Protection Act of 1979) that may be eligible for inclusion in the National Register. ~~COB~~The City shall investigate historical records and pertinent information available at the ~~North-Central Information Center at California State University, Sacramento~~Northwest Information Center of the California Historical Resources Information System at Sonoma State University or some institution containing similar records acceptable to SHPO. The ~~COB-City~~ also shall complete any further studies recommended by the SHPO to determine if the ~~u~~Undertaking has the potential to affect aArcheological ~~properties~~Resources that may be eligible for inclusion in the National Register. It is agreed that the following ground disturbing activities have the potential to affect ~~historic properties~~Archeological Resources: excavation for footings and foundations; installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines and septic tanks except where installation is restricted solely to areas previously disturbed

by the installation of these utilities and ~~installation is restricted to areas previously disturbed by the installation of such~~ systems.

1. If an ~~u~~Undertaking has the potential to affect any ~~a~~Archeological ~~property Resource~~ that may be eligible for inclusion in the National Register, ~~COB the City~~ shall redesign the project to avoid the ~~a~~Archeological ~~property Resource~~ and shall provide the SHPO with documentation regarding the property and the steps it has taken to avoid such property.
2. If the Undertaking cannot be redesigned to avoid the ~~a~~Archeological ~~property Resource~~, ~~COB the City~~ shall develop a plan in consultation with the SHPO to complete the identification, evaluation and, if necessary, mitigation of the ~~impact on the property Archeological Resource~~. If ~~COB the City~~ and the SHPO cannot agree ~~that whether~~ the potential to affect ~~a~~Archeological ~~properties Resources~~ exists or cannot agree on a plan for the consideration of such ~~properties resources~~, ~~COB the City~~ will initiate consultation with the SHPO ~~and Council~~ in accordance with 36 CFR 800.5~~(e)~~6.

VIII. COMBINED REVIEW OF ELIGIBILITY AND EFFECT

~~COB The City~~ may elect to submit the documentation set out in Stipulations ~~IV-VI~~ and ~~V-VII~~ above in one package for the SHPO's review. The SHPO will provide comments on the ~~COB's City's~~ determinations of eligibility and effect within thirty (30) days after receipt of such submission. ~~COB The City~~ will review any such comment of the SHPO and refer to the detailed procedures set out in Stipulations ~~IV-VI~~ and ~~V-VII~~ to determine if additional review by the SHPO ~~or the Council~~ is required to fulfill the terms of this ~~Agreement PA~~.

VIIIIX. SHPO RESPONSIBILITIES

- A. The SHPO is permitted thirty (30) calendar days after receipt of any submitted documentation to review and comment on such material, with the exception of Stipulation VII.A.1. If the SHPO does not provide comments within this time period, the ~~COB City~~ may assume that the SHPO does not object to its determination.
- B. The SHPO will provide technical assistance and training on the application of the Standards and the SHBC to the ~~COB City~~ to the extent possible.

X. EMERGENCY UNDERTAKINGS

- A. This Stipulation shall apply only to situations in which a duly authorized local official has determined in accordance with applicable law, that an imminent threat to the public health and safety exists and that such threat must be removed forthwith ("Emergency Conditions").

- B. When the City determines that Emergency Conditions require immediate demolition of a Historic Property in connection with an activity subject to this PA, the City shall in writing concurrently notify the ACHP, the Landmarks Preservation Commission (LPC), the State Historic Preservation Officer and any Indian Tribe that may attach religious and cultural significance of the proposed removal and afford these parties a maximum of seven (7) days to comment on the proposed demolition. Any notification by the City shall be accompanied by documentation that includes, but is not limited to, a description of the Emergency Conditions, the name, location, and significance of the affected Historic Property, an assessment of the historic Property's current condition supplemented by photographs, and the date by which the Emergency Conditions must be abated. If the City determines that circumstances do not permit seven (7) days for comment, the City shall notify the ACHP, the SHPO, the LPC and the Indian tribe and invite any comments within the time available.
- C. The City shall require that any mitigation measures recommended by the ACHP, the LPC, the SHPO and any affected Indian Tribe be implemented if the City deems such measures to be feasible.
- D. The City shall document the actions taken pursuant to this Stipulation in the manner prescribed by Stipulation XIX.A.
- ~~B-E.~~ Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR §800.12(d)].

XI. PUBLIC INVOLVEMENT

- A. The City shall identify any public interest in the Undertakings subject to this PA by informing the public about Historic Properties when complying with the public participation requirements set forth in 24 CFR Part 58 and in the regulations for any other Program delegated by HUD to the City as may be applicable.
- B. The City shall, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an Undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decision-making. The City may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in sSubpart B of 36 CFR pPart 800, if they provide adequate opportunities for public involvement consistent with that subpart.

- C. At any time during implementation of the measures stipulated in this PA, should a member of the public raise an objection pertaining to delineation of an APE or to treatment of a Historic Property, the City shall notify the SHPO immediately of the objection and then proceed to consider the objection and consult, as needed, with the objecting party and the SHPO, for a period of time not to exceed fifteen (15) calendar days. The City's responsibility to carry out all other actions under this PA that are not the subject of the dispute shall remain unchanged.

~~VIII~~XII. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of these ~~p~~Programs, a previously unidentified property that may be eligible for the inclusion in the National Register is encountered, or a known ~~h~~Historic ~~p~~Property may be affected in an unanticipated manner, ~~COB-the City~~ will assume its responsibility pursuant to 36 CFR 800.~~11(b)(2)~~13(b).

~~IX~~XIII. REPORTING

~~COB-The City~~ shall forward an annual report of all ~~u~~Undertakings covered by the terms of this ~~Agreement-PA~~ to the SHPO, ~~council~~ and the U.S. Department of Housing and Urban Development, San Francisco Regional Office, Region IX [or State of California, Department of Housing and Community Development]. This report will list the ~~u~~Undertakings exempted under Stipulation ~~H-IV~~ and those that were reviewed under the terms of this ~~Agreement-PA~~. The ~~u~~Undertakings should be listed by property address.

~~XIV~~. MONITORING

The SHPO ~~and the Council~~ may monitor any activities carried out pursuant to this ~~Agreement-PA~~ ~~and the Council~~ will review such activity if requested. ~~COB-The City~~ will cooperate with the SHPO ~~and the Council~~ in carrying out these monitoring and review responsibilities.

~~XV~~. DISPUTE RESOLUTION

If ~~COB-the City~~ and the SHPO are unable to resolve any disagreement arising under the provisions of this ~~Agreement-PA~~, ~~COB-the City~~ shall, unless the dispute relates to the National Register eligibility of any property, forward full documentation regarding the project, the basis for the dispute, and request the comments of ~~the Council~~ACHP in accordance with 36 CFR 800.~~5(e)~~.~~6(b)(1)(v)~~.

~~XIX~~XVI. ~~COB-CITY~~ STAFFING

~~COB-The City~~ ~~still will~~ assign staff to assure that rehabilitation work is carried out in accordance with the specifications and work descriptions provided to the SHPO for review in determining effect, including any project modifications recommended by the SHPO which were adopted by ~~COBthe City~~. Such staff will also monitor ~~u~~Undertakings limited to work items enumerated in Attachment "A" which are exempted from review by the SHPO to assure that only qualifying work items are properly performed. Responsible ~~COB-City~~ staff will certify that work was carried out as planned, and will maintain records for each project which document compliance with the terms of this ~~Agreement-PA~~.

~~XIII~~XVII. AMENDMENTS

Any party to this Agreement PA may request it be amended, whereupon the parties will consult in accordance with 36 CFR 800.~~13-14~~ to consider such amendment. No amendment to this Agreement PA will go into effect without written concurrence of all consulting parties.

~~XIV~~XVIII. TERMINATION

Any party to this Agreement PA may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, ~~COB the City~~ will comply with 36 CFR Part 800.4-800.6 with respect to individual ~~undertakings~~Undertakings covered by this Agreement PA.

~~XIX~~V. FAILURE TO COMPLY WITH TERMS OF THE PROGRAMMATIC AGREEMENT

In the event ~~COB the City~~ cannot carry out the terms of this Agreement PA, it the City shall not take or sanction any action or make any irreversible commitment pursuant to a Program or to carry out an Undertaking that would result in an adverse effect to Historic Properties or would foreclose the Council's SHPO's consideration of modifications or alternatives to the Undertaking, and ~~COB the City~~ will comply with 36 CFR Part 800.4-800.6 with regard to each individual ~~u~~Undertaking covered by this Agreement PA. EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that ~~COB the City of Berkeley~~ has afforded the ~~Council~~SHPO a reasonable opportunity to commit on the program and that ~~COB the City~~ has taken into account the effects of the program on ~~h~~Historic ~~p~~Properties.

CITY OF BERKELEY

By: _____ Date: _____
~~Director of Housing Department~~ Dee Williams-Ridley, City Manager

APPROVED AS TO FORM

By: _____ Date: _____
Farimah Brown, City Attorney

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Julianne Polanco

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John Fowler, Executive Director

ATTACHMENT "A"
Programmatic Agreement for Rehabilitation

~~PROJECT ACTIVITIES NOT REQUIRING REVIEW~~The following Undertakings require only administrative review by the City and not the SHPO pursuant to Stipulation IV of this PA.

1. Electrical work, limited to upgrading or in-kind replacement;
2. Plumbing work, limited to upgrading or in-kind replacement, with the exception of historic fixtures which shall be repaired when possible;
3. Installation of mechanical equipment which does not affect the exterior of the building or requiring installation of new duct work throughout the interior;
4. Repainting of existing painted surfaces if destructive surface preparation treatments, including, but not limited to waterblasting, sandblasting and chemical removal are not used;
5. Repair or partial replacement of porches, decks, cornices, exterior siding, doors, thresholds, balustrades, stairs or other trim, when the repair or replacement is done in-kind to exactly-closely match existing material and form;
6. Replacement of deteriorated windows when the replacement is done in-kind to exactly-closely match the existing material or form;
7. Replacement of window panes in-kind or with double or triple glazing so long as glazing is clear and untinted and replacement does not alter the existing window material or form;
8. Caulking and weatherstripping with compatibly colored materials;
9. Roof repair or replacement with materials which exactly-closely match the existing material and form;
10. Installation of insulation, with the exception of urea formaldehyde foam insulation or any other type of thermal insulation which contains water in its chemical composition and is installed within wall cavities, provided that decorative interior plaster or woodwork or exterior siding is not altered by this work item;
11. Installation of fire, ~~or~~ smoke, and carbon monoxide detectors;
12. Installation of security devices including dead bolts, door locks, window latches, door peepholes, and the installation of electronic security systems;

13. Repair or replacement of driveways or walkways when work is done in-kind to exactly match the existing materials and form; existing roads, driveways, sidewalks, curbs, curb ramps, speed bumps and gutters provided that work is done in-kind to closely match existing materials and forms and provided that there are only minimal changes in the dimensions and configurations of these features;
14. Repair or replacement of fencing, gates, and freestanding exterior walls when work is done in-kind to exactly-closely match the existing materials and form;
15. Floor refinishing;
16. Repair or replacement of floors when work is done in-kind to exactly-closely match the existing materials and form;
17. Installation of grab bars, handrails, guardrails and minor interior and exterior modifications for handicapped accessibility;
18. Modifications of and improvements to path of travel for persons with disabilities from, to, and within a building, structure, playground, or park and includes the installation of exterior ramps and chairlifts for handicapped accessibility;
- ~~18-19.~~ Repair or replacement of signs or awnings when work is done in-kind to exactly closely match existing materials and form; and
20. Repair or replacement of interior stairs when work is done in-kind to exactly closely match the existing materials and form;
21. Repair, replacement, or installation of gutters and down spouts;
- ~~19-22.~~ Repair, replacement, and installation of the following, regardless of their location within or adjacent to an historic district:
 - a. Park furniture, including benches, picnic tables, chairs, planter boxes, barbecue pits and trellises.
 - b. Outdoor yard improvements, including play structure, matting, fencing, gates, play ground lighting, drinking fountain, play ground equipments, path of travel and ramps.
 - c. Landscaping, including tree planting, tree pruning, shrub removal, play court resurfacing or sodding, irrigation, murals and painting of game lines for school play yards and grounds.
23. Repair, replacement or installation of water, gas, storm, and sewer lines when the work qualifies as an exemption pursuant to Stipulation V.5; and
24. Stabilization of foundations and addition of foundation bolts.

ATTACHMENT “B”
DEFINITIONS

<u>“Act”</u>	<u>“Act” means the National Historic Preservation Act of 1966, as amended, 16 USC §470.</u>
<u>“ACHP”</u>	<u>“ACHP” means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.</u>
<u>“Archeological Resource”</u>	<u>“Archeological Resource” means any material remains of past human life or activities which are of archaeological interest as determined under uniform regulations promulgated pursuant to 16 USC §470aa-mm.</u>
<u>“Area of Potential Effects” (APE)</u>	<u>“Area of Potential Effects” means the geographic area or areas within which an Undertaking may cause changes in the character or use of historic properties, if any such properties exist.</u>
<u>“City”</u>	<u>“City” means the City of Berkeley.</u>
<u>“Historic Property”</u>	<u>“Historic Property” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. The term includes, for purposes of this PA, artifacts, records, and remains that are related to and located within such properties. The term “eligible for inclusion in the National Register” includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register of Historic Places listing criteria.</u>
<u>“National Register Criteria”</u>	<u>“National Register Criteria” means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).</u>

<p><u>“National Register of Historic Places” (NRHP)</u></p>	<p><u>“National Register of Historic Places” (NRHP) maintained by the Secretary of the Interior and administered by the National Parks Service, is the official list of the Nation's cultural resources worthy of preservation.</u></p>
<p><u>“National Register”</u></p>	<p><u>“National Register” means the National Register of Historic Places maintained by the Secretary of the Interior.</u></p>
<p><u>“Programmatic Agreement” (PA)</u></p>	<p><u>“Programmatic Agreement” means the agreement pursuant to 36 CFR § 800.14(b), between the City, and the SHPO to allow for expedited review of HUD funded projects affecting cultural resources.</u></p>
<p><u>“Secretary”</u></p>	<p><u>“Secretary” means the Secretary of the Interior</u></p>
<p><u>“Standards”</u></p>	<p><u>“Standards” means the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, & Reconstructing Historic Buildings.</u></p>
<p><u>“State Historic Preservation Officer” (SHPO)</u></p>	<p><u>“State Historic Preservation Officer” means the official appointed or designated pursuant to §101(b)(1) of the Act to administer the State Historic Preservation program or a representative designated to act for the State Historic Preservation Officer.</u></p>
<p><u>“Undertaking”</u></p>	<p><u>“Undertaking” means any project, activity, or Program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.</u></p>

PROGRAMMATIC AGREEMENT
BY AND AMONG
THE CITY OF BERKELEY,
~~THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,~~
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

REGARDING HISTORIC PROPERTIES AFFECTED BY USE
OF ~~REVENUE FROM THE DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT PART 58 PROGRAMS COMMUNITY DEVELOPMENT BLOCK
GRANTS; RENTAL REHABILITATION BLOCK GRANTS; AND MCKINNEY ACT
HOMELESS PROGRAMS INCLUDING
THE EMERGENCY SHELTER GRANTS PROGRAM, TRANSITIONAL HOUSING,
PERMANENT HOUSING FOR THE HOMELESS HANDICAPPED,
AND SUPPLEMENTAL ASSISTANCE FOR FACILITIES TO ASSIST THE HOMELESS;
THE HOPE II PROGRAM; THE HOME PROGRAM; THE HOPWA PROGRAM
AND THE SHELTER PLUS CARE PROGRAM~~

WHEREAS, the City of Berkeley (~~COB~~ City), a “Responsible Entity” under 24 CFR Part 58, proposes to administer and fund projects and programs (hereinafter referred to as “Undertakings,” as defined in 36 CFR 800.16y) in the City of Berkeley, California with monies from the U.S. Department of Housing and Urban Development (“HUD”) programs (“Programs”) delegated to the City pursuant to 24 CFR Part 58 or any other pertinent HUD regulations; and Community Development Block Grant program (CDBG) of the Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974; the McKinney Homeless Programs including the Emergency Shelter Grants Program, Transitional Housing, Permanent Housing for the Homeless Handicapped, and Supplemental Assistance for Facilities to Assist the Homeless; the Hope II program; the HOME program; and the Shelter Plus Care program; and

WHEREAS, ~~COB~~ the City has determined the administration of these projects Undertakings and pPrograms may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (“hHistoric pProperties”) and has consulted with the California State Historic Preservation Officer (“SHPO”) and the Advisory Council on Historic Preservation (Council) (“ACHP”) pursuant to 36 CFR Part 800.13 of the regulations implementing Section 106 of the National Historic Preservation Act (16 USC 470f) (“Act”); and

WHEREAS, pursuant to the Advisory Council on Historic Preservation’s (“ACHP”) Section 106 regulations, “Protection of Historic Properties” (“Regulations”) [36 CFR Part 800], the City has requested the comments of the ACHP; and

WHEREAS, pursuant to ACHP’s Section 106 regulations, the City has conducted outreach and has actively sought and requested the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and these Tribes did not respond to our requests to engage in such consultation; and

WHEREAS, the City will continue to conduct outreach and will actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and

WHEREAS, pursuant to ACHP's Section 106 Regulations, the City has considered the nature of the program and its likely effects on historic properties and has taken steps to involve individuals, organizations and entities likely to be effected by the Undertaking; and

WHEREAS, pursuant to ACHP's Section 106 Regulations, the City has arranged for public participation appropriate to the subject matter and scope of the Programmatic Agreement by providing notice to the public and has held meetings before the Landmarks Preservation Commission concerning the Undertaking for the purpose of informing the public and including them in the consultation process; and

WHEREAS, subrecipients receiving Part 58 funds, which are the subject matter of this agreement, by, from, or through the City agree as a condition of receiving funding to comply fully with the requirements of the National Historic Preservation Act of 1966 (16 USC 470) and the procedures set forth in 36 CFR Part 800 on the Historic Preservation Procedures for Protection of Historic Properties; and

NOW, THEREFORE, ~~COB~~the City, and the SHPO, ~~and the Council~~ ACHP agree that the ~~programs~~Undertakings shall be administered in accordance with the following stipulations to satisfy ~~SHRA's~~ the City's Section 106 responsibilities under Section 106 for all individual ~~u~~Undertakings of the ~~p~~Programs, ~~involving rehabilitation.~~

STIPULATIONS

The City of Berkeley shall ensure the following measures are carried out:

I. TERMINATION OF EXISTING PROGRAMMATIC AGREEMENT

The Programmatic Agreement ("PA") entered into on December 3, 1992 by the Advisory Council on Historic Preservation, the California State Historic Preservation Officer and the City of Berkeley is hereby terminated by mutual agreement and is no longer in effect as of the effective date of this Programmatic Agreement. The stipulations agreed to in the PA are replaced in their entirety by the stipulations agreed to in this PA.

II. APPLICABILITY OF THE PROGRAMMATIC AGREEMENT

~~COB~~The City shall comply with the stipulations set forth in this ~~Agreement~~PA for all ~~u~~Undertakings within the City of Berkeley, California, which involve the exterior or interior rehabilitation of residential and commercial structures and is assisted entirely or in part by monies from the ~~p~~Programs of the U.S. Department of Housing and Urban Development ~~listed above~~subject to 24 CFR Part 58. This agreement is also applicable to ~~u~~Undertakings which involve solely acquisition and rehabilitation of structures provided that such ~~u~~Undertakings do not involve demolition or new construction. The review process established by this ~~Agreement~~PA shall be completed prior to ~~COB's~~ the City's final approval of any application for assistance under these ~~p~~Programs, and prior to ~~COB~~ the City or the property owner altering the property, or initiating construction or making irrevocable commitment for construction that may affect a property that is fifty (50) years of age or older. Any ~~u~~Undertaking that does not qualify for review under the terms of this ~~Agreement~~PA shall be reviewed in accordance with the procedures outlined in 36 CFR Part 800.

III. COORDINATION WITH OTHER FEDERAL AGENCIES—36 CFR § 800.2(c)(4)

Other Federal agencies providing permits, licenses, or financial assistance for Program activities covered under the terms of this PA may, with the concurrence of the City and SHPO, satisfy their Section 106 responsibilities by accepting and complying with the terms of this PA. In such situations, the City and the Federal Agency shall notify the SHPO in writing of their intent to use this PA to achieve compliance with Section 106 requirements. If the SHPO does not respond within 21 days of receipt of such a notice of intent, the City and other Federal agency will assume SHPO's concurrence, as referenced above. Copies of all such notification letters shall be maintained in the files established by the City for each such Undertaking.

IV. UNDERTAKING NOT REQUIRING REVIEW BY SHPO ~~OR THE COUNCIL~~
The following Undertakings do not require review by SHPO and no signatory is required by this PA to determine the National Register of Historic Places ("NRHP") eligibility of properties affected by these Undertakings.

A. Undertakings not requiring review by the SHPO ~~or the Council~~ are enumerated in Attachment "A." An Undertaking consisting of activities ~~enumerated in Attachment "A" as well as activities~~ not listed in Attachment "A" shall be reviewed pursuant to the terms of this ~~Agreement~~PA. ~~An undertaking, unless exempt from review under the provisions of Stipulation II.B. below, which is exempted from review under Attachment "A" nevertheless will be designed to be in conformity~~ Undertakings involving Historic Properties but nevertheless exempt from review pursuant to Attachment "A" shall be designed to conform with the California State Historic Building Code [State of California, Title 24 Building Standards, Part 8 ("SHBC")]; ~~as well as the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Building ("Standards").~~

B. Undertakings affecting only properties that are less than fifty (50) years of age do not require review pursuant to the terms of this ~~Agreement~~PA.

C. Undertakings which are limited to the rehabilitation of interior spaces with in single family residential structures where such work will not be visible ~~from~~ from the exterior of the structure do not require review pursuant to the terms of this ~~Agreement~~PA.

III.V. AREA OF POTENTIAL EFFECTS

It is agreed for the purposes of this ~~Agreement~~PA, with the exception of Stipulation VII.B., that the Area of Potential Effects ("APE") will be limited to the individual building when a proposed project is limited to the rehabilitation of its existing interior or exterior features.

IV.I. IDENTIFICATION OF HISTORIC PROPERTIES

A. ~~COB~~ The City shall review all existing information on any property within the APE that may be affected by the use of these funds, including the

National Register of Historic Places and lists of ~~h~~Historic ~~p~~Properties maintained by the City of Berkeley.

1. If the property proposed for rehabilitation is listed in the National Register or has already been determined eligible for inclusion in the National Register, ~~COB~~the City shall proceed with the review of the project pursuant to Stipulation ~~VII~~I, unless exempted under Stipulation ~~III~~IV.
 2. If the property has been determined by ~~COB~~the City, in written consultation with the SHPO, within the last five (5) years prior to the current ~~u~~Undertaking to be ineligible for inclusion in the National Register, then the ~~u~~Undertaking may proceed without further review under the terms of this ~~Agreement~~PA.
- B. If the property proposed for rehabilitation is not listed in the National Register, has not been evaluated for the National Register eligibility within the last five (5) years, and is at least 50 years of age, then ~~COB~~the City shall submit the documentation required pursuant to 36 CFR 800.4 plus a completed California Historic Resources Inventory form (DPR523) to the SHPO for review, ~~included in Attachment "B" to this Agreement~~. Other information may be requested by the SHPO if necessary. ~~COB~~The City shall apply the National Register ~~e~~Criteria and notify the SHPO of its determination in the submittal.
1. If the SHPO agrees with ~~COB~~the City that a property is eligible under the criteria, the property shall be considered eligible for the National Register for purposes of this ~~Agreement~~PA, and shall hereinafter be referred to as a ~~h~~Historic ~~p~~Property. The ~~COB~~City shall continue consultation in accordance with the terms of this ~~Agreement~~PA for all such properties.
 2. If the SHPO agrees with the ~~COB~~City that the criteria are not met, the property shall be considered ineligible for the inclusion in the National Register for a period of five (5) years from the date of the SHPO's review. Such properties need not be reevaluated during this five (5) year period, unless a party to this ~~Agreement~~PA notifies the ~~COB~~City in writing of changing perceptions of significance warrants a property reevaluation. Such properties require no further review under this ~~Agreement~~PA.
 3. If the SHPO disagrees with the ~~COB's~~City's determination regarding eligibility, ~~COB~~the City shall consult further with the SHPO to reach agreement. If agreement cannot be reached, ~~COB~~the City shall obtain a final determination from the Secretary of the

Interior pursuant to the applicable National Park Services regulations, 36 CFR Part 63.

VII. ASSESSMENTS OF EFFECTS

- A. Prior to undertaking any activities that are not exempt under Stipulation ~~IV~~, ~~GOB the City~~ shall provide the SHPO with clear, unobstructed photographs of the historic property and a general work description which adequately details the scope of work for each rehabilitation project that may affect a ~~h~~Historic ~~p~~Property, including work write-ups, working drawings and specifications, as appropriate, and any additional documentation necessary to understand the ~~u~~Undertaking. The ~~GOB City~~ shall ensure that the SHBC will be employed to the greatest extent feasible in all rehabilitation projects. The ~~GOB City~~ shall apply Criteria of Effect and Adverse Effect (36 CFR 800.9) to any ~~h~~Historic ~~p~~Property that may be affected by an ~~u~~Undertaking, and will review the scope of work to determine if the ~~u~~Undertaking conforms to the SHBC as well as the recommended approached approaches contained in the The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Standards) Standards.
1. If the ~~GOB City~~ determines that an ~~u~~Undertaking will have no effect, the ~~GOB City~~ shall notify the SHPO in writing of this finding. If SHPO does not object to this written notice within fifteen (15) days, the Undertaking may proceed without further review.
 2. If the ~~GOB City~~ determines that an ~~u~~Undertaking conforms to the Standards and complies with SHBC, ~~GOB the City~~ shall notify the SHPO in writing of this finding. If the SHPO does not object in writing to this determination within thirty (30) days after receipt, the Undertaking shall be considered to not adversely ~~effect affect~~ ~~h~~Historic ~~p~~Properties and may proceed as submitted without further review.
 3. If the ~~GOB City~~ or the SHPO find that an ~~u~~Undertaking does not conform to the Standards or comply with SHBC, the Undertaking will be considered to adversely affect ~~h~~Historic ~~p~~Properties. The SHPO may recommend modifications to the scope of work or conditions under which the Undertaking would be found to conform to the Standards and the SHBC in its response to ~~SHRA the City~~. ~~SHRA The City~~ shall consult further with the SHPO to seek ways to avoid, minimize, or mitigate the adverse effect. If all adverse effects cannot be avoided, the ~~GOB City~~ shall initiate consultation with the SHPO ~~and Council~~ in accordance with 36CFR 800.56.
 4. The ~~GOB City~~ will notify the SHPO of any changes to the scope of work and shall provide the SHPO with the opportunity to review and approve such changes. If the changes do not conform to the Standards or comply with the SHBC, the parties shall consult

further and the ~~COB-City~~ will initiate consultation with the SHPO ~~and Council~~ in accordance with 36 CFR 800.5~~(e)~~6 if an adverse effect cannot be avoided.

5. The ~~COB-City~~ shall provide completion photographs on each rehabilitation project to the SHPO and shall retain documentation of the rehabilitation, including the work write-ups and photographs as part of its permanent records.

B. Additionally, the ~~COB-City~~ shall consult in writing with the SHPO to determine if an ~~u~~Undertaking which includes ground disturbing activities has the potential to affect ~~an~~ ~~a~~Archeological ~~properties-Resource~~ ~~(as defined by the Archaeological Resources Protection Act of 1979)~~ that may be eligible for inclusion in the National Register. ~~COB-The City~~ shall investigate historical records and pertinent information available at the ~~North-Central Information Center at California State University, Sacramento~~ ~~Northwest Information Center of the California Historical Resources Information System at Sonoma State University~~ or some institution containing similar records acceptable to SHPO. The ~~COB-City~~ also shall complete any further studies recommended by the SHPO to determine if the ~~u~~Undertaking has the potential to affect ~~a~~Archeological ~~propertiesResources~~ that may be eligible for inclusion in the National Register. It is agreed that the following ground disturbing activities have the potential to affect ~~historic properties~~Archeological Resources: excavation for footings and foundations; installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines and septic tanks except where installation is restricted solely to areas previously disturbed by the installation of these utilities and ~~installation is restricted to areas previously disturbed by the installation of such~~ systems.

1. If an ~~u~~Undertaking has the potential to affect any ~~a~~Archeological ~~property-Resource~~ that may be eligible for inclusion in the National Register, ~~COB-the City~~ shall redesign the project to avoid the ~~a~~Archeological ~~property-Resource~~ and shall provide the SHPO with documentation regarding the property and the steps it has taken to avoid such property.
2. If the Undertaking cannot be redesigned to avoid the ~~a~~Archeological ~~propertyResource~~, ~~COB-the City~~ shall develop a plan in consultation with the SHPO to complete the identification, evaluation and, if necessary, mitigation of the ~~impact on the property~~Archeological Resource. If ~~COB-the City~~ and the SHPO cannot agree ~~that whether~~ the potential to affect ~~a~~Archeological ~~properties-Resources~~ exists or cannot agree on a plan for the consideration of such ~~propertiesresources~~, ~~COB-the City~~ will initiate

consultation with the SHPO ~~and Council~~ in accordance with 36 CFR 800.5(e)~~6~~.

VIII. COMBINED REVIEW OF ELIGIBILITY AND EFFECT

~~COB~~ The City may elect to submit the documentation set out in Stipulations ~~IV-VI~~ and ~~V-VII~~ above in one package for the SHPO's review. The SHPO will provide comments on the ~~COB's~~ City's determinations of eligibility and effect within thirty (30) days after receipt of such submission. ~~COB~~ The City will review any such comment of the SHPO and refer to the detailed procedures set out in Stipulations ~~IV-VI~~ and ~~V-VII~~ to determine if additional review by the SHPO ~~or the Council~~ is required to fulfill the terms of this Agreement~~PA~~.

~~VIII~~X. SHPO RESPONSIBILITIES

- A. The SHPO is permitted thirty (30) calendar days after receipt of any submitted documentation to review and comment on such material, with the exception of Stipulation VII.A.1. If the SHPO does not provide comments within this time period, the ~~COB~~ City may assume that the SHPO does not object to its determination.
- B. The SHPO will provide technical assistance and training on the application of the Standards and the SHBC to the ~~COB~~ City to the extent possible.

X. EMERGENCY UNDERTAKINGS

- A. This Stipulation shall apply only to situations in which a duly authorized local official has determined in accordance with applicable law, that an imminent threat to the public health and safety exists and that such threat must be removed forthwith ("Emergency Conditions").
- B. When the City determines that Emergency Conditions require immediate demolition of a Historic Property in connection with an activity subject to this PA, the City shall in writing concurrently notify the ACHP, the Landmarks Preservation Commission (LPC), the State Historic Preservation Officer and any Indian Tribe that may attach religious and cultural significance of the proposed removal and afford these parties a maximum of seven (7) days to comment on the proposed demolition. Any notification by the City shall be accompanied by documentation that includes, but is not limited to, a description of the Emergency Conditions, the name, location, and significance of the affected Historic Property, an assessment of the historic Property's current condition supplemented by photographs, and the date by which the Emergency Conditions must be abated. If the City determines that circumstances do not permit seven (7) days for comment, the City shall notify the ACHP, the SHPO, the LPC and the Indian tribe and invite any comments within the time available.
- C. The City shall require that any mitigation measures recommended by the ACHP, the LPC, the SHPO and any affected Indian Tribe be implemented if the City deems such measures to be feasible.
- D. The City shall document the actions taken pursuant to this Stipulation in the manner prescribed by Stipulation XIX.A.

E. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR §800.12(d)].

XI. PUBLIC INVOLVEMENT

- A. The City shall identify any public interest in the Undertakings subject to this PA by informing the public about Historic Properties when complying with the public participation requirements set forth in 24 CFR Part 58 and in the regulations for any other Program delegated by HUD to the City as may be applicable.
- B. The City shall, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an Undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decision-making. The City may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in ~~s~~Subpart B of 36 CFR ~~p~~Part 800, if they provide adequate opportunities for public involvement consistent with that subpart.
- C. At any time during implementation of the measures stipulated in this PA, should a member of the public raise an objection pertaining to delineation of an APE or to treatment of a Historic Property, the City shall notify the SHPO immediately of the objection and then proceed to consider the objection and consult, as needed, with the objecting party and the SHPO, for a period of time not to exceed fifteen (15) calendar days. The City's responsibility to carry out all other actions under this PA that are not the subject of the dispute shall remain unchanged.

~~VIII~~XII. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of these ~~p~~Programs, a previously unidentified property that may be eligible for the inclusion in the National Register is encountered, or a known ~~h~~Historic ~~p~~Property may be affected in an unanticipated manner, ~~COB~~ the City will assume its responsibility pursuant to 36 CFR 800.41~~(b)~~(2)13(b).

~~IX~~XIII. REPORTING

~~COB~~ The City shall forward an annual report of all ~~u~~Undertakings covered by the terms of this ~~Agreement~~ PA to the SHPO, ~~council~~ and the U.S. Department of Housing and Urban Development, San Francisco Regional Office, Region IX [or State of California, Department of Housing and Community Development]. This report will list the ~~u~~Undertakings exempted under Stipulation ~~H~~IV and those that were reviewed under the terms of this ~~Agreement~~ PA. The ~~u~~Undertakings should be listed by property address.

XIV. MONITORING

The SHPO ~~and the Council~~ may monitor any activities carried out pursuant to this ~~Agreement~~ PA ~~and the Council~~ will review such activity if requested. ~~COB~~ The City will cooperate with the SHPO ~~and the Council~~ in carrying out these monitoring and review responsibilities.

XV. DISPUTE RESOLUTION

If ~~COB~~ the City and the SHPO are unable to resolve any disagreement arising under the provisions of this ~~Agreement~~ PA, ~~COB~~ the City shall, unless the dispute relates to the National Register eligibility of any property, forward full documentation regarding the

project, the basis for the dispute, and request the comments of ~~the Council~~ ACHP in accordance with 36 CFR 800.5(e)-6(b)(1)(v).

~~XII~~ XVI. ~~COB-CITY~~ STAFFING

~~COB~~ The City ~~still will~~ assign staff to assure that rehabilitation work is carried out in accordance with the specifications and work descriptions provided to the SHPO for review in determining effect, including any project modifications recommended by the SHPO which were adopted by ~~COB~~ the City. Such staff will also monitor ~~u~~ Undertakings limited to work items enumerated in Attachment "A" which are exempted from review by the SHPO to assure that only qualifying work items are properly performed.

Responsible ~~COB~~ City staff will certify that work was carried out as planned, and will maintain records for each project which document compliance with the terms of this

Agreement PA.

~~XIII~~ XVII. AMENDMENTS

Any party to this Agreement PA may request it be amended, whereupon the parties will consult in accordance with 36 CFR 800.13-14 to consider such amendment. No amendment to this Agreement PA will go into effect without written concurrence of all consulting parties.

~~XIV~~ XVIII. TERMINATION

Any party to this Agreement PA may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, ~~COB~~ the City will comply with 36 CFR Part 800.4-~~800.6~~ with respect to individual ~~undertakings~~ Undertakings covered by this

Agreement PA.

~~XIX~~ V. FAILURE TO COMPLY WITH TERMS OF THE PROGRAMMATIC AGREEMENT

In the event ~~COB~~ the City cannot carry out the terms of this Agreement PA, it the City shall not take or sanction any action or make any irreversible commitment pursuant to a Program or to carry out an Undertaking that would result in an adverse effect to Historic Properties or would foreclose the Council's SHPO's consideration of modifications or alternatives to the Undertaking, and ~~COB~~ the City will comply with 36 CFR Part 800.4-~~800.6~~ with regard to each individual ~~u~~ Undertaking covered by this Agreement PA.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that ~~COB~~ the City of Berkeley has afforded the ~~Council~~ SHPO a reasonable opportunity to commit on the program and that ~~COB~~ the City has taken into account the effects of the program on ~~h~~ Historic ~~p~~ Properties.

CITY OF BERKELEY

By: _____ Date _____
~~Director of Housing Department~~ Dee Williams-Ridley, City Manager

APPROVED AS TO FORM

By: _____ Date _____
Farimah Brown, City Attorney

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date _____
Julianne Polanco

~~ADVISORY COUNCIL ON HISTORIC PRESERVATION~~

By: _____ Date _____
John Fowler, Executive Director

ATTACHMENT "A"
Programmatic Agreement for Rehabilitation

~~PROJECT ACTIVITIES NOT REQUIRING REVIEW~~ The following Undertakings require only administrative review by the City and not the SHPO pursuant to Stipulation IV of this PA.

1. Electrical work, limited to upgrading or in-kind replacement;
2. Plumbing work, limited to upgrading or in-kind replacement, with the exception of historic fixtures which shall be repaired when possible;
3. Installation of mechanical equipment which does not affect the exterior of the building or requiring installation of new duct work throughout the interior;
4. Repainting of existing painted surfaces if destructive surface preparation treatments, including, but not limited to waterblasting, sandblasting and chemical removal are not used;
5. Repair or partial replacement of porches, decks, cornices, exterior siding, doors, thresholds, balustrades, stairs or other trim, when the repair or replacement is done in-kind to exactly-closely match existing material and form;
6. Replacement of deteriorated windows when the replacement is done in-kind to exactly-closely match the existing material or form;
7. Replacement of window panes in-kind or with double or triple glazing so long as glazing is clear and untinted and replacement does not alter the existing window material or form;
8. Caulking and weatherstripping with compatibly colored materials;
9. Roof repair or replacement with materials which exactly-closely match the existing material and form;
10. Installation of insulation, with the exception of urea formaldehyde foam insulation or any other type of thermal insulation which contains water in its chemical composition and is installed within wall cavities, provided that decorative interior plaster or woodwork or exterior siding is not altered by this work item;
11. Installation of fire, ~~or~~ smoke, and carbon monoxide detectors;
12. Installation of security devices including dead bolts, door locks, window latches, door peepholes, and the installation of electronic security systems;

13. Repair or replacement of ~~driveways or walkways when work is done in-kind to exactly match the existing materials and form;~~existing roads, driveways, sidewalks, curbs, curb ramps, speed bumps and gutters provided that work is done in-kind to closely match existing materials and forms and provided that there are only minimal changes in the dimensions and configurations of these features;
14. Repair or replacement of fencing, gates, and freestanding exterior walls when work is done in-kind to ~~exactly~~closely match the existing materials and form;
15. Floor refinishing;
16. Repair or replacement of floors when work is done in-kind to ~~exactly~~closely match the existing materials and form;
17. Installation of grab bars, handrails, guardrails and minor interior and exterior modifications for handicapped accessibility;
18. Modifications of and improvements to path of travel for persons with disabilities from, to, and within a building, structure, playground, or park and includes the installation of exterior ramps and chairlifts for handicapped accessibility;
- ~~18-19.~~ Repair or replacement of signs or awnings when work is done in-kind to ~~exactly~~closely match existing materials and form; ~~and~~
20. Repair or replacement of interior stairs when work is done in-kind to ~~exactly~~closely match the existing materials and form.;
21. Repair, replacement, or installation of gutters and down spouts;
22. Repair, replacement, and installation of the following, regardless of their location within or adjacent to an historic district:
 - a. Park furniture, including benches, picnic tables, chairs, planter boxes, barbecue pits and trellises.
 - b. Outdoor yard improvements, including play structure, matting, fencing, gates, play ground lighting, drinking fountain, play ground equipments, path of travel and ramps.
 - c. Landscaping, including tree planting, tree pruning, shrub removal, play court resurfacing or sodding, irrigation, murals and painting of game lines for school play yards and grounds.
23. Repair, replacement or installation of water, gas, storm, and sewer lines when the work qualifies as an exemption pursuant to Stipulation V.5; and
24. Stabilization of foundations and addition of foundation bolts.

ATTACHMENT “B”
DEFINITIONS

<u>“Act”</u>	<u>“Act” means the National Historic Preservation Act of 1966, as amended, 16 USC §470.</u>
<u>“ACHP”</u>	<u>“ACHP” means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.</u>
<u>“Archeological Resource”</u>	<u>“Archeological Resource” means any material remains of past human life or activities which are of archaeological interest as determined under uniform regulations promulgated pursuant to 16 USC §470aa-mm.</u>
<u>“Area of Potential Effects” (APE)</u>	<u>“Area of Potential Effects” means the geographic area or areas within which an Undertaking may cause changes in the character or use of historic properties, if any such properties exist.</u>
<u>“City”</u>	<u>“City” means the City of Berkeley.</u>
<u>“Historic Property”</u>	<u>“Historic Property” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. The term includes, for purposes of this PA, artifacts, records, and remains that are related to and located within such properties. The term “eligible for inclusion in the National Register” includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register of Historic Places listing criteria.</u>
<u>“National Register Criteria”</u>	<u>“National Register Criteria” means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).</u>

<p><u>“National Register of Historic Places” (NRHP)</u></p>	<p><u>“National Register of Historic Places” (NRHP) maintained by the Secretary of the Interior and administered by the National Parks Service, is the official list of the Nation's cultural resources worthy of preservation.</u></p>
<p><u>“National Register”</u></p>	<p><u>“National Register” means the National Register of Historic Places maintained by the Secretary of the Interior.</u></p>
<p><u>“Programmatic Agreement” (PA)</u></p>	<p><u>“Programmatic Agreement” means the agreement pursuant to 36 CFR § 800.14(b), between the City, and the SHPO to allow for expedited review of HUD funded projects affecting cultural resources.</u></p>
<p><u>“Secretary”</u></p>	<p><u>“Secretary” means the Secretary of the Interior</u></p>
<p><u>“Standards”</u></p>	<p><u>“Standards” means the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, & Reconstructing Historic Buildings.</u></p>
<p><u>“State Historic Preservation Officer” (SHPO)</u></p>	<p><u>“State Historic Preservation Officer” means the official appointed or designated pursuant to §101(b)(1) of the Act to administer the State Historic Preservation program or a representative designated to act for the State Historic Preservation Officer.</u></p>
<p><u>“Undertaking”</u></p>	<p><u>“Undertaking” means any project, activity, or Program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.</u></p>

PROGRAMMATIC AGREEMENT
BY AND AMONG
THE CITY OF BERKELEY
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

REGARDING HISTORIC PROPERTIES AFFECTED BY USE OF REVENUE FROM
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PART 58
PROGRAMS

WHEREAS, the City of Berkeley ("City"), a "Responsible Entity" under 24 CFR Part 58, proposes to administer and fund projects and programs (hereinafter referred to as "Undertakings," as defined in 36 CFR 800.16y) in the City of Berkeley, California with monies from the U.S. Department of Housing and Urban Development ("HUD") programs ("Programs") delegated to the City pursuant to 24 CFR Part 58 or any other pertinent HUD regulations; and

WHEREAS, the City has determined the administration of these Undertakings and Programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places ("Historic Properties") and has consulted with the California State Historic Preservation Officer ("SHPO") pursuant to 36 CFR Part 800 of the regulations implementing Section 106 of the National Historic Preservation Act (16 USC 470f) ("Act"); and

WHEREAS, pursuant to the Advisory Council on Historic Preservation's ("ACHP") Section 106 regulations, "Protection of Historic Properties" ("Regulations") [36 CFR Part 800], the City has requested the comments of the ACHP; and

WHEREAS, pursuant to ACHP's Section 106 regulations, the City has conducted outreach and has actively sought and requested the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and these Tribes did not respond to our requests to engage in such consultation; and

WHEREAS, the City will continue to conduct outreach and will actively seek and request the comments and participation of Indian tribes that attach religious and cultural significance to historic properties that may be affected by Undertakings funded under the terms of this Agreement; and

WHEREAS, pursuant to ACHP's Section 106 Regulations, the City has considered the nature of the program and its likely effects on historic properties and has taken steps to involve individuals, organizations and entities likely to be effected by the Undertaking; and

WHEREAS, pursuant to ACHP's Section 106 Regulations, the City has arranged for public participation appropriate to the subject matter and scope of the Programmatic Agreement by providing notice to the public and has held meetings before the

Landmarks Preservation Commission concerning the Undertaking for the purpose of informing the public and including them in the consultation process; and

WHEREAS, sub-recipients receiving Part 58 funds, which are the subject matter of this agreement, by, from, or through the City agree as a condition of receiving funding to comply fully with the requirements of the National Historic Preservation Act of 1966 (16 USC 470) and the procedures set forth in 36 CFR Part 800 on the Historic Preservation Procedures for Protection of Historic Properties; and

NOW, THEREFORE, the City, and the SHPO agree that the Undertakings shall be administered in accordance with the following stipulations to satisfy the City's responsibilities under Section 106 for all individual Undertakings of the Programs.

STIPULATIONS

The City of Berkeley shall ensure the following measures are carried out:

I. TERMINATION OF EXISTING PROGRAMMATIC AGREEMENT

The Programmatic Agreement ("PA") entered into on December 3, 1992 by the Advisory Council on Historic Preservation, the California State Historic Preservation Officer and the City of Berkeley is hereby terminated by mutual agreement and is no longer in effect as of the effective date of this Programmatic Agreement. The stipulations agreed to in the PA are replaced in their entirety by the stipulations agreed to in this PA.

II. APPLICABILITY OF THE PROGRAMMATIC AGREEMENT

The City shall comply with the stipulations set forth in this PA for all Undertakings within the City of Berkeley, California, which involve the exterior or interior rehabilitation of residential and commercial structures and is assisted entirely or in part by monies from the Programs of the U.S. Department of Housing and Urban Development subject to 24 CFR Part 58. This agreement is also applicable to Undertakings which involve solely acquisition and rehabilitation of structures provided that such Undertakings do not involve demolition or new construction. The review process established by this PA shall be completed prior to the City's final approval of any application for assistance under these Programs, and prior to the City or the property owner altering the property, or initiating construction or making irrevocable commitment for construction that may affect a property that is fifty (50) years of age or older. Any Undertaking that does not qualify for review under the terms of this PA shall be reviewed in accordance with the procedures outlined in 36 CFR Part 800.

III. COORDINATION WITH OTHER FEDERAL AGENCIES—36 CFR § 800.2(c)(4)

Other Federal agencies providing permits, licenses, or financial assistance for Program activities covered under the terms of this PA may, with the concurrence of the City and SHPO, satisfy their Section 106 responsibilities by accepting and complying with the terms of this PA. In such situations, the City and the Federal Agency shall notify the SHPO in writing of their intent to use this PA to achieve compliance with Section 106 requirements. If the SHPO does not respond within 21 days of receipt of such a notice

of intent, the City and other Federal agency will assume SHPO's concurrence, as referenced above. Copies of all such notification letters shall be maintained in the files established by the City for each such Undertaking.

IV. UNDERTAKING NOT REQUIRING REVIEW BY SHPO

The following Undertakings do not require review by SHPO and no signatory is required by this PA to determine the National Register of Historic Places ("NRHP") eligibility of properties affected by these Undertakings.

- A. Undertakings not requiring review by the SHPO are enumerated in Attachment "A." An Undertaking consisting of activities not listed in Attachment "A" shall be reviewed pursuant to the terms of this PA. Undertakings involving Historic Properties but nevertheless exempt from review pursuant to Attachment "A" shall be designed to conform with the California State Historic Building Code [State of California, Title 24 Building Standards, Part 8 ("SHBC")] as well as the *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Building* ("Standards").
- B. Undertakings affecting only properties that are less than fifty (50) years of age do not require review pursuant to the terms of this PA.
- C. Undertakings which are limited to the rehabilitation of interior spaces within single family residential structures where such work will not be visible from the exterior of the structure do not require review pursuant to the terms of this PA.

V. AREA OF POTENTIAL EFFECTS

It is agreed for the purposes of this PA, with the exception of Stipulation VII.B., that the Area of Potential Effects ("APE") will be limited to the individual building when a proposed project is limited to the rehabilitation of its existing interior or exterior features.

VI. IDENTIFICATION OF HISTORIC PROPERTIES

- A. The City shall review all existing information on any property within the APE that may be affected by the use of these funds, including the National Register of Historic Places and lists of Historic Properties maintained by the City of Berkeley.
 - 1. If the property proposed for rehabilitation is listed in the National Register or has already been determined eligible for inclusion in the National Register, the City shall proceed with the review of the project pursuant to Stipulation VII, unless exempted under Stipulation IV.

2. If the property has been determined by the City, in written consultation with the SHPO, within the last five (5) years prior to the current Undertaking to be ineligible for inclusion in the National Register, then the Undertaking may proceed without further review under the terms of this PA.
- B. If the property proposed for rehabilitation is not listed in the National Register, has not been evaluated for the National Register eligibility within the last five (5) years, and is at least 50 years of age, then the City shall submit the documentation required pursuant to 36 CFR 800.4 plus a completed California Historic Resources Inventory form (DPR523) to the SHPO for review. Other information may be requested by the SHPO if necessary. The City shall apply the National Register Criteria and notify the SHPO of its determination in the submittal.
1. If the SHPO agrees with the City that a property is eligible under the criteria, the property shall be considered eligible for the National Register for purposes of this PA, and shall hereinafter be referred to as a Historic Property. The City shall continue consultation in accordance with the terms of this PA for all such properties.
 2. If the SHPO agrees with the City that the criteria are not met, the property shall be considered ineligible for the inclusion in the National Register for a period of five (5) years from the date of the SHPO's review. Such properties need not be reevaluated during this five (5) year period, unless a party to this PA notifies the City in writing of changing perceptions of significance warrants a property reevaluation. Such properties require no further review under this PA.
 3. If the SHPO disagrees with the City's determination regarding eligibility, the City shall consult further with the SHPO to reach agreement. If agreement cannot be reached, the City shall obtain a final determination from the Secretary of the Interior pursuant to the applicable National Park Services regulations, 36 CFR Part 63.
- VII. ASSESSMENTS OF EFFECTS
- A. Prior to undertaking any activities that are not exempt under Stipulation IV, the City shall provide the SHPO with clear, unobstructed photographs of the historic property and a general work description which adequately details the scope of work for each rehabilitation project that may affect a Historic Property, including work write-ups, working drawings and specifications, as appropriate, and any additional documentation necessary to understand the Undertaking. The City shall ensure that the SHBC will be employed to the greatest extent feasible in all rehabilitation projects. The City shall apply Criteria of Effect and Adverse Effect (36

CFR 800.9) to any Historic Property that may be affected by an Undertaking, and will review the scope of work to determine if the Undertaking conforms to the SHBC as well as the recommended approaches contained in the Standards.

1. If the City determines that an Undertaking will have no effect, the City shall notify the SHPO in writing of this finding. If SHPO does not object to this written notice within fifteen (15) days, the Undertaking may proceed without further review.
 2. If the City determines that an Undertaking conforms to the Standards and complies with SHBC, the City shall notify the SHPO in writing of this finding. If the SHPO does not object in writing to this determination within thirty (30) days after receipt, the Undertaking shall be considered to not adversely affect Historic Properties and may proceed as submitted without further review.
 3. If the City or the SHPO find that an Undertaking does not conform to the Standards or comply with SHBC, the Undertaking will be considered to adversely affect Historic Properties. The SHPO may recommend modifications to the scope of work or conditions under which the Undertaking would be found to conform to the Standards and the SHBC in its response to the City. The City shall consult further with the SHPO to seek ways to avoid, minimize, or mitigate the adverse effect. If all adverse effects cannot be avoided, the City shall initiate consultation with the SHPO in accordance with 36CFR 800.6.
 4. The City will notify the SHPO of any changes to the scope of work and shall provide the SHPO with the opportunity to review and approve such changes. If the changes do not conform to the Standards or comply with the SHBC, the parties shall consult further and the City will initiate consultation with the SHPO in accordance with 36 CFR 800.6 if an adverse effect cannot be avoided.
 5. The City shall provide completion photographs on each rehabilitation project to the SHPO and shall retain documentation of the rehabilitation, including the work write-ups and photographs as part of its permanent records.
- B. Additionally, the City shall consult in writing with the SHPO to determine if an Undertaking which includes ground disturbing activities has the potential to affect an Archeological Resource (as defined by the Archeological Resources Protection Act of 1979) that may be eligible for inclusion in the National Register. The City shall investigate historical

records and pertinent information available at the Northwest Information Center of the California Historical Resources Information System at Sonoma State University or some institution containing similar records acceptable to SHPO. The City also shall complete any further studies recommended by the SHPO to determine if the Undertaking has the potential to affect Archeological Resources that may be eligible for inclusion in the National Register. It is agreed that the following ground disturbing activities have the potential to affect Archeological Resources: excavation for footings and foundations; installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines and septic tanks except where installation is restricted solely to areas previously disturbed by the installation of these utilities and systems.

1. If an Undertaking has the potential to affect any Archeological Resource that may be eligible for inclusion in the National Register, the City shall redesign the project to avoid the Archeological Resource and shall provide the SHPO with documentation regarding the property and the steps it has taken to avoid such property.
2. If the Undertaking cannot be redesigned to avoid the Archeological Resource, the City shall develop a plan in consultation with the SHPO to complete the identification, evaluation and, if necessary, mitigation of the impact on the Archeological Resource. If the City and the SHPO cannot agree whether the potential to affect Archeological Resources exists or cannot agree on a plan for the consideration of such resources, the City will initiate consultation with the SHPO in accordance with 36 CFR 800.6.

VIII. COMBINED REVIEW OF ELIGIBILITY AND EFFECT

The City may elect to submit the documentation set out in Stipulations VI and VII above in one package for the SHPO's review. The SHPO will provide comments on the City's determinations of eligibility and effect within thirty (30) days after receipt of such submission. The City will review any such comment of the SHPO and refer to the detailed procedures set out in Stipulations VI and VII to determine if additional review by the SHPO is required to fulfill the terms of this PA.

IX. SHPO RESPONSIBILITIES

- A. The SHPO is permitted thirty (30) calendar days after receipt of any submitted documentation to review and comment on such material, with the exception of Stipulation VII.A.1. If the SHPO does not provide comments within this time period, the City may assume that the SHPO does not object to its determination.
- B. The SHPO will provide technical assistance and training on the application of the Standards and the SHBC to the City to the extent possible.

X. EMERGENCY UNDERTAKINGS

- A. This Stipulation shall apply only to situations in which a duly authorized local official has determined in accordance with applicable law, that an imminent threat to the public health and safety exists and that such threat must be removed forthwith (“Emergency Conditions”).
- B. When the City determines that Emergency Conditions require immediate demolition of a Historic Property in connection with an activity subject to this PA, the City shall in writing concurrently notify the ACHP, the Landmarks Preservation Commission (LPC), the State Historic Preservation Officer and any Indian Tribe that may attach religious and cultural significance of the proposed removal and afford these parties a maximum of seven (7) days to comment on the proposed demolition. Any notification by the City shall be accompanied by documentation that includes, but is not limited to, a description of the Emergency Conditions, the name, location, and significance of the affected Historic Property, an assessment of the historic Property’s current condition supplemented by photographs, and the date by which the Emergency Conditions must be abated. If the City determines that circumstances do not permit seven (7) days for comment, the City shall notify the ACHP, the SHPO, the LPC and the Indian tribe and invite any comments within the time available.
- C. The City shall require that any mitigation measures recommended by the ACHP, the LPC, the SHPO and any affected Indian Tribe be implemented if the City deems such measures to be feasible.
- D. The City shall document the actions taken pursuant to this Stipulation in the manner prescribed by Stipulation XIX.A.
- E. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR §800.12(d)].

XI. PUBLIC INVOLVEMENT

- A. The City shall identify any public interest in the Undertakings subject to this PA by informing the public about Historic Properties when complying with the public participation requirements set forth in 24 CFR Part 58 and in the regulations for any other Program delegated by HUD to the City as may be applicable.
- B. The City shall, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an Undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decision-making.

The City may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in Subpart B of 36 CFR Part 800, if they provide adequate opportunities for public involvement consistent with that subpart.

- C. At any time during implementation of the measures stipulated in this PA, should a member of the public raise an objection pertaining to delineation of an APE or to treatment of a Historic Property, the City shall notify the SHPO immediately of the objection and then proceed to consider the objection and consult, as needed, with the objecting party and the SHPO, for a period of time not to exceed fifteen (15) calendar days. The City's responsibility to carry out all other actions under this PA that are not the subject of the dispute shall remain unchanged.

XII. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of these Programs, a previously unidentified property that may be eligible for the inclusion in the National Register is encountered, or a known Historic Property may be affected in an unanticipated manner, the City will assume its responsibility pursuant to 36 CFR 800.13(b).

XIII. REPORTING

The City shall forward an annual report of all Undertakings covered by the terms of this PA to the SHPO, and the U.S. Department of Housing and Urban Development, San Francisco Regional Office, Region IX [or State of California, Department of Housing and Community Development]. This report will list the Undertakings exempted under Stipulation IV and those that were reviewed under the terms of this PA. The Undertakings should be listed by property address.

XIV. MONITORING

The SHPO may monitor any activities carried out pursuant to this PA will review such activity if requested. The City will cooperate with the SHPO in carrying out these monitoring and review responsibilities.

XV. DISPUTE RESOLUTION

If the City and the SHPO are unable to resolve any disagreement arising under the provisions of this PA, the City shall, unless the dispute relates to the National Register eligibility of any property, forward full documentation regarding the project, the basis for the dispute, and request the comments of ACHP in accordance with 36 CFR 800.6(b)(1)(v).

XVI. CITY STAFFING

The City will assign staff to assure that rehabilitation work is carried out in accordance with the specifications and work descriptions provided to the SHPO for review in determining effect, including any project modifications recommended by the SHPO which were adopted by the City. Such staff will also monitor Undertakings limited to

work items enumerated in Attachment "A" which are exempted from review by the SHPO to assure that only qualifying work items are properly performed. Responsible City staff will certify that work was carried out as planned, and will maintain records for each project which document compliance with the terms of this PA.

XVII. AMENDMENTS

Any party to this PA may request it be amended, whereupon the parties will consult in accordance with 36 CFR 800.14 to consider such amendment. No amendment to this PA will go into effect without written concurrence of all consulting parties.

XVIII. TERMINATION

Any party to this PA may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the City will comply with 36 CFR Part 800 with respect to individual Undertakings covered by this PA.

XIX. FAILURE TO COMPLY WITH TERMS OF THE PROGRAMMATIC AGREEMENT

In the event the City cannot carry out the terms of this PA, it the City shall not take or sanction any action or make any irreversible commitment pursuant to a Program or to carry out an Undertaking that would result in an adverse effect to Historic Properties or would foreclose the Council's SHPO's consideration of modifications or alternatives to the Undertaking, and COB the City will comply with 36 CFR Part 800 with regard to each individual Undertaking covered by this PA.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidence that the City of Berkeley has afforded the SHPO a reasonable opportunity to commit on the program and that the City has taken into account the effects of the program on Historic Properties.

CITY OF BERKELEY

By: _____ Date: _____
Dee Williams-Ridley, City Manager

APPROVED AS TO FORM

By: _____ Date: _____
Farimah Brown, City Attorney

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Julianne Polanco

ATTACHMENT "A"
Programmatic Agreement for Rehabilitation

The following Undertakings require only administrative review by the City and not the SHPO pursuant to Stipulation IV of this PA.

1. Electrical work, limited to upgrading or in-kind replacement;
2. Plumbing work, limited to upgrading or in-kind replacement, with the exception of historic fixtures which shall be repaired when possible;
3. Installation of mechanical equipment which does not affect the exterior of the building or requiring installation of new duct work throughout the interior;
4. Repainting of existing painted surfaces if destructive surface preparation treatments, including, but not limited to waterblasting, sandblasting and chemical removal are not used;
5. Repair or partial replacement of porches, decks, cornices, exterior siding, doors, thresholds, balustrades, stairs or other trim, when the repair or replacement is done in-kind to closely match existing material and form;
6. Replacement of deteriorated windows when the replacement is done in-kind to closely match the existing material or form;
7. Replacement of window panes in-kind or with double or triple glazing so long as glazing is clear and untinted and replacement does not alter the existing window material or form;
8. Caulking and weatherstripping with compatibly colored materials;
9. Roof repair or replacement with materials which closely match the existing material and form;
10. Installation of insulation, with the exception of urea formaldehyde foam insulation or any other type of thermal insulation which contains water in its chemical composition and is installed within wall cavities, provided that decorative interior plaster or woodwork or exterior siding is not altered by this work item;
11. Installation of fire, smoke, and carbon monoxide detectors;
12. Installation of security devices including dead bolts, door locks, window latches, door peepholes, and the installation of electronic security systems;
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match existing materials and forms and provided that there are only minimal changes in the dimensions and configurations of these features;

14. Repair or replacement of fencing, gates, and freestanding exterior walls when work is done in-kind to closely match the existing materials and form;
15. Floor refinishing;
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17. Installation of grab bars, handrails, guardrails and minor interior and exterior modifications for handicapped accessibility;
18. Modifications of and improvements to path of travel for persons with disabilities from, to, and within a building, structure, playground, or park and includes the installation of exterior ramps and chairlifts for handicapped accessibility;
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20. Repair or replacement of interior stairs when work is done in-kind to closely match the existing materials and form;
21. Repair, replacement, or installation of gutters and down spouts;
22. Repair, replacement, and installation of the following, regardless of their location within or adjacent to an historic district:
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<p>“Programmatic Agreement” (PA)</p>	<p>“Programmatic Agreement” means the agreement pursuant to 36 CFR § 800.14(b), between the City, and the SHPO to allow for expedited review of HUD funded projects affecting cultural resources.</p>
<p>“Secretary”</p>	<p>“Secretary” means the Secretary of the Interior</p>
<p>“Standards”</p>	<p>“Standards” means the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, & Reconstructing Historic Buildings.</p>
<p>“State Historic Preservation Officer” (SHPO)</p>	<p>“State Historic Preservation Officer” means the official appointed or designated pursuant to §101(b)(1) of the Act to administer the State Historic Preservation program or a representative designated to act for the State Historic Preservation Officer.</p>
<p>“Undertaking”</p>	<p>“Undertaking” means any project, activity, or Program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.</p>